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No. 00-191

In the Supreme Court of the United States

FEDERAL ELECTION COMMISSION, PETITIONER

v.

COLORADO REPUBLICAN
FEDERAL CAMPAIGN COMMITTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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As we explain in our opening brief (at 5-6, 18-19), the statutory provision at issue in this case (2 U.S.C. 441a(d)) does not impose any special disadvantage on political parties. Rather, the effect of Section 441a(d) is to allow party committees to make coordinated expenditures in support of their candidates for federal office in amounts far greater than the limits that apply to other donors. Our opening brief further explains (at 16-18) that, as applied to individuals and to organizations other than political parties, the coordinated expenditure limits contained in the Federal Election Campaign Act of 1971 (FECA) have previously been sustained by this Court as a constitutionally permissible means of addressing the danger of actual or

perceived political corruption. Thus, the question in this case is whether a party committee is entitled by the First Amendment to a complete exemption from coordinated spending limits that are valid as applied to other persons.

Respondent offers two basic arguments in support of its claim to such an exemption. First, respondent contends (Br. 25-32) that a restriction on coordinated spending—or, to put it a slightly different way, a requirement that spending in excess of the applicable FECA limit must be made independently of the candidate—imposes greater burdens on political parties than on other donors. Second, respondent argues (Br. 33-49) that the government has failed to demonstrate the corruptive potential of coordinated spending by political parties. For the reasons that follow, those arguments lack merit.

I. THE DISTINCTIVE RELATIONSHIP BETWEEN POLITICAL PARTIES AND THEIR CANDIDATES PROVIDES NO BASIS FOR FACIAL INVALIDATION OF THE FECA'S LIMITS ON COORDINATED PARTY SPENDING

Respondent contends that the FECA limits on coordinated expenditures impose greater burdens on political parties than on other donors because (a) "[p]arties exist precisely to elect candidates that share the goals of their party" (Br. 26), and (b) "political parties find independent speech to be much less effective than coordinated speech" (Br. 29). Those arguments provide no basis for facial invalidation of the FECA's limits on party-coordinated expenditures.

A. In *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), this Court upheld the FECA's limitations on contributions, finding that they serve a compelling

government interest in "the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office." *Id.* at 25; see *id.* at 23-38. The Court recognized as well that "controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act," in order to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions." *Id.* at 46, 47.

The Court struck down the Act's restrictions on independent expenditures, however, concluding that "the independent advocacy restricted by the [FECA] does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions." 424 U.S. at 46. The Court explained that

> [u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an [independent] expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.

Id. at 47; see *id.* at 39-59. Thus, respondent's assertion that its independent expenditures are "much less effective than coordinated speech" provides no basis for distinguishing political parties from other would-be donors. To the contrary, the view that independent expenditures will *generally* be less efficacious than co-

ordinated spending in bringing about the election of the payor's favored candidate was a central premise of the *Buckley* decision.

B. Respondent contends (Br. 29) that the extensive interaction between candidates and party officials during the course of a campaign makes it especially difficult and inefficient for the party to establish and maintain independence from the candidate with respect to particular expenditures. Respondent offers no meaningful support for that statement beyond the bare assertion that it is so.[1] But even if respondent's contention were empirically well-supported, the difficulty of making independent expenditures would not entitle any particular donor to make coordinated expenditures in excess of the FECA limits. No individual or non-party organization would be permitted to grant itself (in effect) an exemption from the FECA's coordinated spending limits simply by establishing a relationship with a candidate that made independent expenditures infeasible. Even assuming arguendo the empirical accuracy of respondent's assertion— *i.e.*, that the existence of a particularly close overall relationship between a candidate and a political committee makes it more "complex, expensive, and difficult" (Resp. Br. 29) for the organization to make independent expenditures in the candidate's support—respondent is simply confronted with the same choice that the FECA requires of any other organization engaged in political advocacy.

C. As we explain in our opening brief (at 39-49), political parties have no constitutional entitlement to an exemption from the coordinated spending limits that apply to other potential donors. Congress has recognized, however, that parties have come to play a role in the Nation's electoral processes significantly different from that of other political organizations. Section 441a(d) facilitates the parties' performance of their distinctive functions by authorizing state and national party committees to make coordinated expenditures that would otherwise substantially exceed the Act's limitations on contributions to candidates. See Gov't Br. 18-19.

Thus, insofar as the maintenance of independence from the candidate with respect to particular expenditures might be thought to entail greater practical burdens on party committees than on other political organizations, Section 441a(d) alleviates the disparity

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[1] Under the FECA, the distinction between independent and coordinated expenditures turns on whether an expenditure is made "in cooperation, consultation, or concert, with" the candidate or his agents. 2 U.S.C. 441a(a)(7)(B)(i). As this Court's decision in *Colorado I* shows, the general role of party officials in supporting the party's candidates does not necessarily preclude the party from acting independently of the candidate with respect to individual expenditures. Respondent acknowledges (Br. 17) that so-called "soft money" (see Gov't Br. 32) cannot be spent in coordination with a candidate for federal office; yet the volume of "soft money" spending by the two major political parties is very large and growing rapidly. See *Party Fundraising Escalates*, FEC News Release at 2 (Jan. 12, 2001) (available in www.fec.gov) (reporting that from January 1, 1999, through November 27, 2000, "Republicans raised $244.4 million [in soft money], an increase of 73% over the same period in 1995-96, the last presidential cycle, while Democrats raised $243 million, a 99% increase"). And while soft money cannot be used for communications that expressly advocate the election or defeat of a candidate for federal office, it has frequently been used for advertisements that focus on the merits of particular federal candidates. See *Mariani* v. *United States*, 212 F.3d 761, 768 & n.4 (3d Cir.) (en banc), cert. denied, 121 S. Ct. 564 (2000). That pattern of spending indicates that political parties have in fact successfully engaged in substantial campaign-related advertising without coordinating with their candidates.

by authorizing parties to engage in substantially greater coordinated spending than the Act otherwise allows. As our opening brief explains (at 47-49), the task of fashioning an appropriate balance between facilitation of the parties' distinctive functions and the prevention of political corruption is preeminently a legislative endeavor. Respondents have offered no persuasive ground for concluding that Congress has drawn the balance in a constitutionally unacceptable manner.

D. As our opening brief explains (at 20-21), the effect of the court of appeals' decision is to preclude enforcement of the FECA limits on party-coordinated expenditures even with respect to party spending (*e.g.*, payment of the candidate's bills) that is the functional and constitutional equivalent of a direct contribution of money. Respondent does not explain how the FECA limits on that form of coordinated spending subject political parties to greater hardship than other political committees experience as a result of the analogous (though much lower) limits applicable to them. Indeed, respondent expressly disavows any constitutional challenge to the FECA's $5000 limit on the amount that a political party may contribute to one of its candidates. See Resp. Br. 50 n.31.

Nor does respondent suggest—much less demonstrate—that expenditures of the sort described above constitute an insubstantial portion of overall party-coordinated spending. Respondent asserts (Br. 25) that Section 441a(d) "limits party speech," based on its expert's determination that "[o]ver 90% of the monies spent by national party committees on behalf of their candidates is spent on political communication." Respondent's statement is apparently intended to convey the impression that most party-coordinated spending is devoted to communication of the party's

own ideas. But money "spent on political communication" would include "direct payment of a candidate's media bills"—a form of coordinated expenditure that involves no meaningful communication by the party itself, and that the plurality in *Colorado I* characterized as "virtually indistinguishable from simple contributions." Pet. App. 111a. Indeed, the *same* expert stated, with respect to the national parties' coordinated expenditures, that "[t]he predominant approach is to provide candidates with the funding needed to broadcast their messages or post letters to selected voters within their districts." J.A. 209; see Gov't Br. 20-21. That Section 441a(d) constrains a political party's ability to pay for its candidates' speech does not mean that the statute significantly impairs the party's ability to engage in its own communication.[2]

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[2] Respondent attaches significance to the Federal Election Commission's statement, in a *Federal Register* notice, that "coordinated party expenditures . . . are not contributions." Resp. Br. 10 (emphasis omitted); see Resp. Br. 32. The import of the Commission's *Federal Register* statement, however, was simply that for *recordkeeping* purposes, a party's coordinated expenditures in support of its federal candidates must be reported separately from its direct monetary contributions. See 62 Fed. Reg. 50,712 (1997). In addition, the FECA distinguishes between party-coordinated expenditures and party contributions to candidates to the extent of establishing separate limits for each. See Gov't Br. 5-6 n.3. Those technical distinctions under the statute and regulations are in no way inconsistent with this Court's repeated recognition that for *constitutional* purposes, coordinated expenditures are regulable on the same terms as direct contributions. That equivalence is particularly clear with respect to coordinated expenditures, such as payment of a candidate's bills, that involve no meaningful communication of the party's own views.

II. THE FECA LIMITS ON PARTY-COORDINATED EXPENDITURES ARE A REASONABLE AND CONSTITUTIONALLY PERMISSIBLE MEANS OF PREVENTING ACTUAL OR APPARENT POLITICAL CORRUPTION

Respondent's principal argument is that the government has failed to demonstrate a sufficient logical or empirical connection between party-coordinated expenditures and political corruption to justify the spending limits imposed by Section 441a(d). For the reasons that follow, that argument is unsound.

A. As our opening brief explains (at 31-32 n.14), the Federal Election Commission introduced extensive evidence indicating that donors who have contributed the maximum permissible amount to an individual candidate are frequently urged to contribute additional sums to the candidate's party, and through informal understandings are encouraged to expect that the party will make equivalent expenditures in support of the candidate's campaign. The purpose and effect of fundraising techniques like the "tally system" is that both the donor and the candidate are aware of the causal connection between the donor's contribution to the party and the candidate's subsequent receipt of financial support. See, *e.g.*, J.A. 273 (former Senator Tim Wirth asserts that in soliciting funds for the state party, he "understood that the solicitees who made contributions to the party almost always did so because they expected that the contributions would support my campaign one way or another, and for the most part they expected I would remember their contributions"). Under those circumstances, the corruptive potential of the private donation is not meaningfully less than if the contribution were made directly to the candidate

himself. Although Section 441a(d) does not entirely prevent such arrangements, it substantially reduces the potential for circumvention of the caps on contributions to candidates by limiting the aggregate amounts of money that can be channeled through the parties.[3]

In asserting that "the FEC failed to identify a single instance in which a modern political party has corrupted a member of Congress" (Resp. Br. 33 (emphasis omitted)), respondent apparently means that the evidence presented to the district court identified no occasion in which party-coordinated spending was demonstrably used to alter the voting behavior of a Member of Congress. But nothing in this Court's decisions suggests that empirical evidence of that nature is necessary in order to sustain a campaign funding restriction that is premised on an anti-corruption rationale. Indeed, while the Court in *Buckley* referred in passing to "the deeply disturbing examples [of political corruption] surfacing after the 1972 election," 424 U.S. at 27; see *id.* at 27 n.28 (explaining that "[t]he Court of Appeals' opinion in [*Buckley*] discussed a

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[3] The fact that the tally system is not itself unlawful (see Resp. Br. 39-40, 42) does not reduce the force of our argument on this point. To the contrary, the absence of any legal prohibition on arrangements (like the tally system) that do not involve definite commitments by the party, but that nevertheless create a practical danger of circumvention of the FECA contribution limits, reinforces the propriety of Section 441a(d)'s caps on party-coordinated expenditures. Nor is there merit to respondent's argument (Br. 42) that Congress is constitutionally required to broaden the earmarking prohibition contained in 2 U.S.C. 441a(a)(8) in preference to restricting party-coordinated spending. An effort to broaden the earmarking ban (*e.g.*, by prohibiting donors to the party from expressing to party officials their particular support for individual candidates) could itself raise serious First Amendment concerns.

number of the abuses uncovered after the 1972 elections"), neither this Court nor the court of appeals in that case identified any instance in which a legislator's vote was shown to have been altered by the receipt of large contributions. Rather, the thrust of the evidence to which the Court alluded was simply that large campaign contributions by persons having an interest in the outcome of a government decision would create a significant *danger* (and a corresponding public perception) of "improper influence" (*Buckley*, 424 U.S. at 27; *Nixon* v. *Shrink Mo. Gov't PAC*, 120 S. Ct. 897, 905 (2000)) based on financial largesse. See *Buckley* v. *Valeo*, 519 F.2d 821, 839-840 (D.C. Cir. 1975).[4]

B. In emphasizing the supposed dearth of evidence regarding the corruptive effects of party-coordinated expenditures, respondent altogether ignores the fact that the FECA has limited party spending for over 25 years. Questions concerning the corruptive potential of unrestricted party-coordinated spending therefore must necessarily be resolved on the basis of logical inferences regarding the likely consequences of a future change in the governing legal regime. Cf. *Burson* v.

[4] Much of the evidence on which the court of appeals in *Buckley* relied indicated that "[l]arge contributions are intended to, and do, gain access to the elected official after the campaign for consideration of the contributor's particular concerns." 519 F.2d at 838; see *id.* at 839-840 nn.36-38. The court evidently regarded the purchase of access as an appropriate object of congressional concern, even in the absence of direct evidence that votes in Congress or substantive government decisions had been altered in response to large campaign contributions. Similarly in the instant case, the Commission introduced substantial evidence that party committees solicit large contributions to the party through promises to facilitate meetings between donors and the party's Members of Congress. See, *e.g.*, J.A. 91-93, 96-98.

Freeman, 504 U.S. 191, 208 (1992) (opinion of Blackmun, J.) ("The fact that these laws have been in effect for a long period of time also makes it difficult for the States to put on witnesses who can testify as to what would happen without them.").[5]

As our opening brief explains (at 18-19, 49), Congress in establishing limits on party-coordinated spending has endeavored to strike an appropriate balance between the prevention of actual or apparent corruption and the desire to "assur[e] that political parties will continue to have an important role in federal elections." *FEC* v. *Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 41 (1981). That effort is in keeping with this Court's recognition that "the 'differing structures and purposes' of different entities 'may require different forms of regulation in order to protect the integrity of the electoral process.'" *FEC* v. *National Right to Work Comm.*, 459 U.S. 197, 210 (1982) (quoting *California Med. Ass'n* v. *FEC*, 453 U.S. 182, 201 (1981)). The constitutional legitimacy of the balance struck by Congress can scarcely be thought to depend on proof that Section 441a(d) has failed to achieve its objective.

C. The FECA limits on federal campaign contributions (defined to include coordinated expenditures) rest on Congress's judgment that donations above the statutory limits create a sufficient *risk* of actual or perceived political corruption to warrant the adoption of a prophylactic rule. In *Buckley*, this Court sustained

[5] By contrast, the contribution limits at issue in both *Buckley* and *Shrink Missouri* were subjected to constitutional challenge shortly after their enactment. See *Buckley*, 424 U.S. at 6-7; *Shrink Mo.*, 120 S. Ct. at 901-902. It was therefore somewhat more feasible to expect the government in defending those laws to present evidence indicating that the abuses at which the caps were directed had actually occurred in the recent past.

the FECA contribution limits, notwithstanding the Court's assumption that "most large contributors do not seek improper influence over a candidate's position or an officeholder's action." 424 U.S. at 29. The Court explained that it is "difficult to isolate suspect contributions," and that "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Id.* at 30. Neither *Buckley* nor this Court's subsequent campaign-finance decisions suggest that the danger of corruption must be proved separately with respect to each potential category of donor.

To the contrary, the Court in *Buckley* upheld the application of the FECA contribution limits to members of a candidate's immediate family, even though it was not presented with either record evidence or legislative findings of corruption by family members. 424 U.S. at 53 n.59. The Court explained that "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors." *Ibid.* Similarly here, since respondent seeks a categorical exemption from spending limits that have been held valid as applied to individuals and non-party political committees, it is respondent's burden to demonstrate that unlimited party-coordinated spending will *not* create the same

potential for abuse as similar expenditures by non-party donors.[6] Respondent cannot make that showing.

1. The individuals who direct the disbursement of party funds—who are in many instances themselves Members of Congress responsible to the party's congressional leadership (see Gov't Br. 33 n.16)—have an obvious and substantial interest in the voting behavior of legislators within the party. Although the election to Congress of as many party members as possible is certainly one of the party's goals (see Resp. Br. 26-27, 34), that goal is subordinate to the party's ultimate objective of implementing a legislative program. A Member of Congress who is nominally aligned with a political party, but who regularly flouts the wishes of the party leadership, is at best an uncertain asset. There is no reason to believe that the officials charged with allocating the party's funds would be more willing than other donors to forgo efforts to utilize coordinated expenditures as a means of influencing legislative behavior. To the contrary, because party-coordinated expenditures will often be controlled by a small number of individuals who are intensely interested in the voting behavior of the party's candidate once elected or re-elected to office (see Gov't Br. 33 &

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[6] Respondent contends (Br. 30) that coordinated spending by a political party in support of its candidates should be regarded as analogous to the candidate's financial support of his own campaign, which the Court in *Buckley* held (see 424 U.S. at 51-54) could not constitutionally be limited. But if the candidate's immediate family members are treated as sufficiently distinct from the candidate to permit limitation of their coordinated expenditures, there is no reason that a different constitutional rule should apply to party officials.

n.16), the rationale of *Buckley* is directly applicable here.[7]

2. Four Justices in *Colorado I* concluded that the FECA limits on party expenditures are unconstitutional even as applied to spending that is in fact coordinated with a candidate for federal office. See Pet. App. 114a-119a (Kennedy, J., joined by Rehnquist, C.J., and Scalia, J., concurring in the judgment and dissenting in part); *id.* at 119a-140a (Thomas, J., joined in part by Rehnquist, C.J., and Scalia, J., concurring in the judgment and dissenting in part); Gov't Br. 8. Those Justices did not suggest, however, that party committees are less likely than other donors to use coordinated spending as a means of influencing the conduct of party members once in office. Justice Kennedy's concurring and dissenting opinion took the position that political parties have a particular need to coordinate their campaign spending with their candidates and are therefore specially burdened by the FECA's limits on coordinated expenditures. See Pet. App. 114a-115a, 118a. We address that argument at pages 2-7, *supra*. The thrust of Justice Thomas's concurring and dissenting opinion was that because "[t]he very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes," the party's achievement of that aim "does not * * * constitute a subversion of the political process." *Id.* at 138a

[7] The fact that some Members of Congress are able to transfer surplus campaign funds to the party (see Resp. Br. 34 & n.20) scarcely prevents the use of party-coordinated expenditures as a means of influencing legislative behavior. To the contrary, the fact that certain senior legislators may be the *source* of party funds is likely to heighten their influence over those Members of Congress who *are* supported by party-coordinated expenditures.

(internal quotation marks omitted). As we explain in our opening brief, however, although party officials have an undoubted right to seek to influence their members' voting behavior, the effort to pursue that legitimate objective through financial largesse poses special risks. Congress's decision to address those risks through reasonable limits on party-coordinated spending is constitutional. See Gov't Br. 38 & n.18.

Significantly, respondent makes no effort to defend the theory, articulated in Justice Thomas's concurring and dissenting opinion in *Colorado I*, that a political party has a constitutional right to employ coordinated expenditures as a means of influencing its members' votes. Respondent relies instead upon the quite different assertion that party officials will not utilize coordinated expenditures in that manner, even if all limits on such expenditures are eliminated. For the reasons set forth above, there is no basis for concluding that party officials are uniquely reluctant to use coordinated spending as a means of influencing legislative behavior.

3. Respondent contends that "FECA's extensive reporting and disclosure requirements," as well as the limits on contributions *to* party committees, render limits on party-coordinated expenditures unnecessary. See Resp. Br. 35, 42. Those features of the Act, however, are not unique to political parties. All political committees must publicly report a broad range of information regarding income and outlays. See 2 U.S.C. 434. With party committees, no less than other political committees, "Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption." *Buckley*, 424 U.S. at 28; accord *Shrink*

Mo., 120 S. Ct. at 908 n.7. And contributions to non-party political committees are subject to the same FECA limits that apply to contributions to respondent. See 2 U.S.C. 441a(a)(1)(C) and (2)(C).[8]

D. Respondent contends (Br. 36-38, 44-45) that the FECA limits on party-coordinated expenditures cannot be sustained on an anti-corruption rationale because those limits were enacted for a different reason. Respondent principally relies (Br. 37) on the plurality's statement in *Colorado I* that "this Court's opinions

[8] Respondent also contends that party-coordinated expenditures in support of congressional candidates are unlikely to cause corruption because "a party's incumbent members of Congress * * * are unlikely to be pushed around by offers to provide or threats to withhold campaign support," while non-incumbent candidates "are not in a position to provide official favors" at the time the expenditures are made. Resp. Br. 34, 35. Like the arguments discussed in the preceding paragraph of the text, those contentions if persuasive would suggest that *all* FECA limits on contributions to candidates are unnecessary (since every potential recipient of campaign funding is either an incumbent or a non-incumbent); but they provide no basis for distinguishing party-coordinated expenditures from the coordinated spending of other donors. Cf. *Buckley*, 424 U.S. at 33 ("Since the danger of corruption and the appearance of corruption apply with equal force to challengers and to incumbents, Congress had ample justification for imposing the same fundraising constraints upon both.").

There is also no merit to respondent's suggestion (Br. 46) that a more "closely drawn response [to the danger of corruption] would be to reduce the allowable size of contributions" *to* the party. That approach would effectively reduce the party's ability to engage in *independent* spending in support of its candidates for federal office. Far from being "closely drawn," a limit on contributions to the party would as a practical matter more significantly constrain the party's own communications than does Section 441a(d)'s requirement that expenditures above the statutory limit must be made independently of the candidate.

suggest that Congress wrote [Section 441a(d)] not so much because of a special concern about the potentially 'corrupting' effect of party expenditures, but rather for the constitutionally insufficient purpose of reducing what it saw as wasteful and excessive campaign spending." Pet. App. 104a (citing *Buckley*, 424 U.S. at 57).[9] As the dissenting judge in the court of appeals recognized, however, that statement "is found in [the *Colorado I* plurality's] discussion of limits on independent party expenditures." *Id.* at 50a n.6 (Seymour, J., dissenting); cf. *Shrink Mo.*, 120 S. Ct. at 907 (explaining that *Colorado I* "did not deal with a government's burden to justify limits on contributions"; rather, "the issue in question was limits on independent expenditures by political parties"). The apparent import of the *Colorado I* plurality's assertion is that Congress's attempt to

[9] The *Colorado I* plurality also stated that "rather than indicating a special fear of the corruptive influence of political parties, the legislative history demonstrates Congress' general desire to enhance what was seen as an important and legitimate role for political parties in American elections." Pet. App. 104a. We agree that the FECA's legislative history reveals no "*special* fear of the corruptive influence of political parties"—*i.e.*, Congress did not believe that party campaign spending creates a *greater* risk of corruption than similar spending by other political committees. Congress's "desire to enhance what was seen as an important and legitimate role for political parties in American elections" explains Congress's decision to permit party-coordinated spending in amounts far greater than the contribution limits that apply to other donors, but it provides no basis for exempting parties from all constraints on coordinated spending. Similarly, the absence of "special" reasons for concern about party expenditures supports the *Colorado I* plurality's determination that parties (like other political committees) have an unrestricted First Amendment right to engage in independent campaign spending; but it does not suggest that parties are constitutionally entitled to make unlimited *coordinated* expenditures.

limit the *independent* campaign expenditures of political parties is most plausibly understood as an effort to reduce overall campaign spending. But there is no reason to doubt that Congress's decision to restrict party-coordinated expenditures was motivated (at least in part) by the same anti-corruption rationale that generally underlies the FECA contribution limits.[10]

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[10] Contrary to respondent's suggestion (Br. 37 & n.23), Congress in 1976 focused specifically upon the spending limits applicable to political parties before amending the FECA in response to this Court's decision in *Buckley*. The Conference Report accompanying the 1976 FECA amendments explains that Section 441a(d)

> allows the political parties to make contributions in kind by spending money for certain functions to aid the individual candidates who represent the party during the election process. Thus, but for this subsection [Section 441a(d)], these expenditures would be covered by the contribution limitations stated in subsections (a)(1) and (a)(2) of this provision.

H.R. Conf. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976); see Gov't Br. 18-19. The Conference Report thus expressly contemplates the application of Section 441a(d) to coordinated expenditures amounting to "contributions in kind." It is surely reasonable to assume that Congress, in continuing to subject such expenditures to dollar limits (albeit limits much higher than the caps that apply to other donors), was motivated by the same considerations that generally support the FECA contribution limits.

There is also no merit to respondent's contention (Br. 36 n.22) that Section 441a(d)'s population-based formula for calculating the party-coordinated expenditure limit for Senate campaigns in each State (see Gov't Br. 3, 5-6) "belies an anticorruption motive." The statutory formula reflects Congress's recognition that the expense of campaigning is generally proportional to the number of potential voters in a particular election. The formula preserves a roughly comparable role for political parties in Senate campaigns in each State. Determining the precise level of appropriate contribution limits is a legislative judgment that does not raise meaningful constitutional concerns, see *Buckley*, 424 U.S. at 30, and Congress

Indeed, as our opening brief explains (at 27-29), Members of Congress, in debating a 1973 predecessor to the FECA, expressly advocated the imposition of limits on contributions by parties to their candidates based on an anti-corruption rationale. As our opening brief acknowledges (at 28-29 & n.13), the provisions ultimately enacted in 1974 differed in some respects from those debated the previous year. Contrary to respondent's contention (Br. 38), however, those differences in no way undermine the natural inference that Congress's retention in the enacted bill of limits on party spending reflected a continuing concern regarding potential corruption of candidates.[11]

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is not precluded from considering other policy objectives in fashioning the legislation, see *id.* at 36, 84 n.112.

[11] Respondent's reliance (Br. 38) on *Garcia* v. *United States*, 469 U.S. 70 (1984), is misplaced. The Court in *Garcia* recognized that "[t]o permit [floor] colloquies to alter the clear language of the statute undermines the intent of Congress." *Id.* at 78. The instant case, however, involves no question of statutory interpretation at all, let alone an effort "to alter the clear language of the statute." Rather, the 1973 legislative history simply reinforces what would in any event be the most normal inference—*i.e.*, that Congress's decision to limit the coordinated expenditures of political parties was motivated by roughly the same concern that has been held to support the coordinated spending limits imposed on other persons.

For the reasons stated above, and for those stated in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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JANUARY 2001